

LEGAL ANALYSES

New Strict AML Rules Regarding Payments on Blockchain and New “Stable Coin” Guidelines in Switzerland

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Abstract

The Swiss Financial Market Supervisory Authority (FINMA) issued new guidance on its interpretation of anti-money laundering regulation in respect of digital token transfers and new guidelines explaining the regulatory qualification of tokens linked to underlying

assets (stable coins), which may also have an impact on Facebook’s Libra project. These regulatory novelties shall be at the heart of this legal analysis.

Introduction

The Swiss Government has been keen to foster FinTech companies, which are considered as having a major impact on the transformation, digitalisation and development of the financial industry.¹ In this context, a legislative reform was enacted mid-2017 in order to reduce market entry barriers for providers in the FinTech area and increase legal certainty for the entire sector. An extended maximum holding period for settlement accounts was introduced as well as an innovation “sandbox”.² In June 2018, the Swiss Parliament then introduced a new type of banking licence for institutions that do not carry out typical banking business (FinTech licence).³ Further, in order to reduce the diligence duties of FinTech companies, which are generally small start-ups,⁴ FINMA revised its own Anti-Money Laundering Ordinance (AMLO–FINMA).⁵ The entire FinTech regulation package entered into force on 1 January 2019.

FINMA has been enhancing particularly since 2013 the regulatory framework in order to facilitate the technological progress for the financial sector as a whole.⁶ Recently, the authority issued new guidance on its interpretation of Swiss anti-money laundering regulation in respect of digital token transfers and new guidelines explaining the regulatory qualification of tokens which are linked to underlying assets, aiming at minimising fluctuations in their market value (stable coins), which may have an impact on Facebook’s Libra project (see below). These regulatory novelties shall be at the heart of this legal analysis, while a particular focus shall also be put on a consultation draft regarding the adaptation of federal law to developments in distributed ledger technology (DLT).

FINMA Guidance 02/2019—payments on the blockchain

Concurrently with granting banking and securities dealers’ licences to two service providers focusing on crypto currencies and other digital assets and offering services for institutional and professional customers, FINMA has published the *FINMA Guidance 02/2019—Payments on the blockchain* (Blockchain AML Guidance) on 26 August

* Responsibility for the information and views set out in this legal analysis lies entirely with the author, they do not necessarily reflect the position of BNP Paribas (Suisse) SA and/or the BNP Paribas Group.

¹ P. Schueffel, “Taming the Beast: A Scientific Definition of Fintech” (2016) 4 *Journal of Innovation Management* 32.

² P. Nobel, “Entwicklungen im Bank- und Kapitalmarktrecht” in *Schweizerische Juristen-Zeitung* SJZ No.115 (2019), p.16.

³ Nobel, “Entwicklungen im Bank- und Kapitalmarktrecht” (2019), p.16.

⁴ A start-up is not just considered as an ordinary incorporation of a company but rather as a process, through which a new organisation starts to exist, as described in V. Tiberius and C. Rasche (eds), *FinTechs, Disruptive Geschäftsmodelle im Finanzsektor* (Berlin: Springer, 2017), p.5.

⁵ Nobel, “Entwicklungen im Bank- und Kapitalmarktrecht” (2019), p.16.

⁶ FINMA, “Jahresbericht 2016” (2017) available at: https://www.finma.ch/de/~media/finma/dokumente/dokumentencenter/myfinma/finma-publikationen/geschaeftsbericht/20170404_fin_jb16.pdf?la=de [Accessed 3 December 2019].

2019.⁷ The Blockchain AML Guidance details the application of Swiss anti-money laundering (AML) regulation on blockchain payment services and lays out the measures financial services providers, which are under the supervision of FINMA, have to take in offering services regarding digital assets.⁸

General development of Swiss anti-money laundering regulation

The Swiss AML regulation has continuously been developed in order to cope with international trends and requirements, such as the recommendations of the Financial Action Task Force (FATF). Based on a FATF recommendation dating from 2018, for example, the AMLO–FINMA has been amended and will enter into force on 1 January 2020, requiring Swiss financial intermediaries with branches or group affiliates abroad to intensify their risk management. Furthermore, the threshold for identification measures regarding cash transactions has been lowered to CHF 15,000, the FATF level.⁹ A guidance issued by FATF on 21 June 2019 in the context of blockchain technology, the *FATF Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*, then led to the Blockchain AML Guidance.

From a more general perspective, the Anti-Money Laundering Act 1997 (AMLA) and the respective Anti-Money Laundering Ordinance (AMLO) apply, among others, to financial intermediaries, which in the sense of the AMLA need to be affiliated with an authorised self-regulatory organisation or directly supervised by FINMA for AML purposes. A financial intermediary has to comply with the typical AML obligations, such as identification and know-your-customer (KYC) obligations relating to the contracting party and its beneficial owner. It also has to notify the Money Laundering Reporting Office in case of any suspicion regarding AML or terrorism financing.¹⁰ FINMA, as a principle, has consistently applied AMLA to blockchain service providers since their emergence.¹¹

Particular provisions of the Blockchain AML Guidance

In the Blockchain AML Guidance, FINMA reaffirms its technology-neutral application of the regulation to payment transactions on the blockchain, but it also underlines that blockchain-based business models may not be allowed to circumvent the existing regulatory

framework. Due to the inherent anonymity of the blockchain, FINMA identifies an increased risk in connection with AML and terrorist financing.¹²

As is the case for traditional bank transfers, information about the client and the beneficiary needs to be transmitted with transfers of tokens, except in cases of transfers from and to unregulated wallet providers. Accordingly, a provider receiving this information has to check the name of the sender based on sanction lists or check that the information provided about the beneficiary is correct.¹³ Institutions supervised by FINMA, however, are only permitted to send cryptocurrencies or other tokens to external wallets belonging to own customers whose identity has already been verified and are only allowed to receive cryptocurrencies or tokens from them. Accordingly, they are not permitted to receive tokens from external customers or to send tokens to them. This practice is applicable until information about the sender and recipient can be transmitted in a reliable way in the respective payment system.

A financial intermediary of a payment originator is required based on art.10, para.1 of the AMLO–FINMA to transmit the originator's name, the account number or, where there is none, the transaction-based reference number, and its address or, as an alternative, the place and date of birth, client number or national identity number. Now, while it is not necessary for the information to be transmitted on the blockchain, because a transmission could also take place via other communication channels according to the Blockchain AML Guidance, FINMA admits that it is currently unaware of any system, such as the SWIFT messaging system, or of any bilateral agreements between service providers, that would enable the reliable and compliant transmission of originator and beneficiary identification data for payment transaction on the blockchain.¹⁴ For such systems (or agreements) to be in line with art.10 of the AMLO–FINMA, they would have to involve only service providers which are subject to appropriate anti-money laundering supervision.

As a consequence and in the absence of appropriate information transfer systems or networks of bilateral or multilateral agreements between regulated correspondent institutions, FINMA-supervised institutions need to make sure that transfers of tokens to or from external wallets only involve own clients who have been duly onboarded. Furthermore, the ownership of the external wallet needs to be verified using not specified "suitable technical

⁷ FINMA, "FINMA guidance: stringent approach to combating money laundering on the blockchain" (26 August 2019) available at: <https://www.finma.ch/en/news/2019/08/20190826-mm-kryptogwg/> [Accessed 3 December 2019].

⁸ D. Flühmann and R. Bahar, "FINMA Grants Banking Licenses to New Swiss Crypto Banks, Introduces New Strict AML Rules regarding Payments on Blockchain" (CapLaw 4/2019), p.22.

⁹ Nobel, "Entwicklungen im Bank- und Kapitalmarktrecht" (2019), p.17.

¹⁰ O. Favre, T. Houdrouge and F. Elsener, *The Virtual Currency Regulation Review* (Switzerland, 2018), Ch.27, p.289.

¹¹ FINMA, "FINMA guidance: stringent approach to combating money laundering on the blockchain" (2019).

¹² FINMA, "FINMA Guidance 02/2019—Payments on the blockchain" (16 August 2019), p.2.

¹³ FINMA, "FINMA guidance: stringent approach to combating money laundering on the blockchain" (2019).

¹⁴ Flühmann and Bahar, "FINMA Grants Banking Licenses to New Swiss Crypto Banks, Introduces New Strict AML Rules regarding Payments on Blockchain" (2019), p.23.

means”, as is the case for exchange transactions involving an external wallet (fiat-to-virtual currency, virtual-to-fiat currency, or virtual-to-virtual currency).¹⁵

FINMA praises itself that the established practice is one of the most stringent in the world, due to the absence of exceptions for payment transactions in virtual assets originating from or the beneficiary of which is an individual who is not a customer of an entity subject to AML supervision, which is allowed to be foreseen by Member States under the respective FATF guidance.¹⁶ Also, compared to the AML requirements on cash transactions, it may be considered as even more stringent due to the absence of any de minimis thresholds.¹⁷

FINMA supplement to the guidelines for enquiries regarding the regulatory framework for initial coin offerings

The Financial Stability Board (FSB) published ahead of the G20 Finance Ministers and Central Bank Governors meeting in mid-October a note setting out regulatory issues of stable coins.¹⁸ It stated that in light of the announcement by private sector actors of their intention to launch stable coin-type arrangements for domestic and cross-border retail payments and remittances, with the potential to reach global scale (so-called global stable coins), stable coin arrangements could potentially become a source of systemic risk and that an effective regulatory and supervisory approach needs to be able to identify, monitor and address potential risks in a reasonable range of scenarios and use cases.¹⁹

A stable coin has been defined as

“a crypto-asset designed to maintain a stable value relative to another asset (typically a unit of currency or commodity) or a basket of assets. These may be collateralised by fiat currency or commodities, or supported by algorithms”.²⁰

Accordingly, the term “global stable coins” refers to stable coins with a potential global reach and the ability to rapidly scale in terms of users or holders of the crypto-asset.

Already one month ahead of the FSB, FINMA published on 11 September 2019 a supplement to its *Guidelines on Initial Coin Offerings* of 16 February 2018 (ICO Guidelines), for enquiries regarding the regulatory framework for initial coin offerings (Stable Coin

Guidelines), concurrently to the confirmation that it had received a request from the Libra Association for an assessment or ruling of the Libra project.²¹ FINMA had observed an increase in the number of projects to create stable coins since mid-2018 among the projects based on blockchain technology, aiming at minimising the fluctuations in value which are typical to crypto currencies like Bitcoin.²² FINMA states, however, that the word “stable” is primarily a marketing term.²³

2018 ICO Guidelines as starting point

FINMA published the ICO Guidelines on 16 February 2018, as a guidance paper setting out in broad terms its intentions for future regulatory practice in this area. These new guidelines relied on FINMA’s earlier *Guidance 04/2017: Regulatory treatment of initial coin offerings*, of 29 September 2017, where it was clarified that ICOs of Swiss issuers need to be scrutinised under the general principles of the Swiss financial market legislation. The relevant laws that may be applied are the banking legislation for any deposit-taking activity, the securities legislation for tokens classified as securities, the anti-money laundering legislation for any activity of a financial intermediary for AML purposes and the collective investment schemes legislation for any fund management or related activity (on a case-by-case basis).²⁴

With the ICO Guidelines, FINMA created an independent way to classify the underlying economic function of tokens, in line with models used by leading practitioners, whereby it distinguished three token categories: (1) payment tokens, commonly also referred to as crypto currencies; (2) utility tokens, which are intended to provide digital access to an application or service through a blockchain-based infrastructure; and (3) asset tokens, which represent assets (debt or equity claims) against the respective issuer and which may economically be deemed as equivalent to equities, bonds or derivatives. Furthermore, hybrid forms thereof are also possible.²⁵ FINMA then concluded that payment tokens do not qualify as securities, subject to further developments on case law or legislation, but are rather treated as a payment method.²⁶ Utility tokens also do not constitute securities, unless there is an investment purpose at the point of issue. Finally, FINMA qualified asset tokens as securities within the meaning of art.2(b) of the Financial Market Infrastructure Act 2015 (FMIA).²⁷

¹⁵ FINMA, “FINMA Guidance 02/2019—Payments on the blockchain” (2019), p.3.

¹⁶ FINMA, “FINMA guidance: stringent approach to combating money laundering on the blockchain” (2019).

¹⁷ Flühmann and Bahar, “FINMA Grants Banking Licenses to New Swiss Crypto Banks, Introduces New Strict AML Rules regarding Payments on Blockchain” (2019), p.23.

¹⁸ FSB, “Regulatory issues of stablecoins” (Press Release, 2019) available at: <https://www.fsb.org/2019/10/regulatory-issues-of-stablecoins/> [Accessed 3 December 2019].

¹⁹ FSB, “Regulatory issues of stablecoins” (2019).

²⁰ FSB, “Regulatory issues of stablecoins” (2019), fn.2; it is stated though that “[t]he term is used to describe a particular set of crypto-assets with certain design characteristics or stated objectives, but [that] the use of this term should not be construed as any endorsement or legal guarantee of the value or stability of these tokens”.

²¹ FINMA, “FINMA publishes ‘stable coin’ guidelines” (11 September 2019) available at: https://www.finma.ch/en/news/2019/09/20190911-mm-stable-coins/?pk_campaign=News-Service&pk_kwd=FINMA%20publishes%20%E2%80%98stable%20coin%E2%80%99%20guidelines [Accessed 3 December 2019].

²² Bitcoin is considered based on its market capitalisation as the most relevant crypto currency, see S. Zogg, *Recht: Zeitschrift für juristische Weiterbildung und Praxis, Bitcoin als Rechtsobjekt—eine zivilrechtliche Einordnung* (2019), p.95.

²³ FINMA, “Supplement to the guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)” (11 September 2019), p.1.

²⁴ V. Müller and V. Mignon, “La qualification juridique des tokens: aspects réglementaires” [2017] (4) GesKR 487.

²⁵ FINMA, *Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)* (2018), cl.3.1.

²⁶ D. Vock and D. Hofmann, “DLT-basierte Token: Pfändung und Konkursbeschlagnahme” in *Schweizerische Juristen-Zeitung* SJZ No.115 (2019), p.309.

²⁷ FINMA, *Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)* (2018), cl.3.2.

Categorisation under the Stable Coin Guidelines

The Stable Coin Guidelines follow the FINMA's established approach of focusing on the economic function and purpose of a token ("substance over form") and applying the technology-neutral principle of "same risks, same rules", while continuing to analyse projects on a case-by-case basis.²⁸ They stress that the AMLA is almost always applicable and that the application of the FMIA regarding licensing requirements as a payment system is probable, if a payment system of significant importance is launched with the creation of a stable coin.²⁹

While not all stable coins confer a contractual claim (redemption claim) against the issuer on the underlying assets and different financial market laws may apply, the Stable Coin Guidelines establish four main types of stable coins based on their underlying³⁰:

- *stable coins linked to currencies*: the issuer of a stable coin which is linked to a specific fiat currency with a fixed redemption claim (e.g. one coin equals one Swiss franc) may require a banking licence under the Swiss Banking Act 1934 (SBA) since the issuer would be deemed to have accepted deposits from the public. However, if the coin holder may only redeem the stable coin at the current value of an underlying currency basket, it may rather qualify as a unit in a collective investment scheme. In FINMA's view, the relevant criteria is who bears the risks related to the management of the underlying assets, i.e. profits or losses, interest, fluctuations in the value of the underlying or counterparty or operation risk. Does the issuer bear all the afore-listed risks, then this would be indicative of a deposit under the SBA (including the exemptions provided therein), otherwise, if the coin holder bears these risks, the stable coin would probably qualify as a unit in a collective investment scheme and trigger the respective licensing or approval requirements under the Collective Investment Schemes Act 2006 (CISA). If a stable coin does, however, not foresee an explicit redemption claim for the coin holder, but is rather based on an alternative stabilisation mechanism, it may still trigger the licensing requirements under other financial market regulations, such as the FMIA, and also AMLA requirements, if the envisaged payment system is of significant importance;
- *stable coins linked to commodities*: depending on the type of underlying commodity and whether the coin holder has only a contractual claim or acquires a right in rem in the underlying commodity, the licensing requirements for an issuer of stable coins linked to commodities varies. A stable coin representing a right in rem does not in general qualify as a security, if: (1) the coin holder does not merely have a contractual claim in the underlying commodity; (2) the transfer of the coin results in a transfer of the ownership in the commodity; and (3) the underlying commodities are not deposited as fungible goods pursuant to art.481 of the Code of Obligations. On the other hand, where the coin holder does have a contractual claim against the issuer, the qualification of the coin will depend on the type of the underlying. The issuer may probably require a banking licence if the stable coin is linked to so-called bank precious metals, due to the similarity to bank precious metal accounts. If the coin is linked to a financial market activity, it may constitute a security and possibly qualify as a derivative, which would result in a potential licensing obligation for the issuer as securities dealer. Finally, where the stable coin is linked to a basket of commodities (including "bank precious metals") with a price-dependent redemption claim, it may qualify as units in a collective investment scheme;
- *stable coins linked to real estate*: redeemable stable coins linked to a real estate portfolio will in most cases fall within the scope of the CISA, since the third-party management of the real estate portfolio is, according to FINMA, in itself an indication of a collective investment scheme, and the coin holders do not have a right in rem in the real estate; and
- *stable coins linked to securities*: a stable coin linked to a single security providing for a contractual right of the coin holder in the underlying security most probably qualifies as a security itself. On the other hand, if a stable coin is linked to a basket of securities, it constitutes in most cases a unit in a collective investment scheme.

²⁸ FINMA, "Supplement to the guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)" (2019), p.1.

²⁹ FINMA, "Supplement to the guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)" (2019), p.1.

³⁰ Detailed listing based on the FINMA, "Supplement to the guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)" (2019).

Indications on how the Libra project would be classified

Based on the request by the Libra Association, a Facebook-linked Swiss association (*Verein*) domiciled in Geneva,³¹ FINMA has been asked to detail how it would classify the planned project.³² Ruling requests are standard practice for FINMA (and also for many other federal and cantonal agencies), particularly in case innovative projects. Thereby, FINMA is in a position to inform potential market participants about how Swiss supervisory law is applied,³³ irrespective of the wider (and also political) discussion on the project itself.³⁴ Also, the Swiss Government confirmed mid-October 2019 that it had been informed about the current opportunities and challenges regarding stable coins, mentioning “the new Libra cryptocurrency”, which shall be overseen by the Libra Association, and stated that it is open to discussions on internationally viable standards in connection with the use of new technologies, while keeping a very close eye on global stable coin projects and their associated opportunities and risks.³⁵

From FINMA’s perspective, the classification of Libra’s project would, at this preliminary stage, include the following aspects, whereby in its view and due to the international scope of the project, an internationally co-ordinated approach would be required, also as regards a co-ordinated definition of the listed requirements³⁶:

- *payment system licence*: the project would fall within the scope of the FMIA and, based thereupon, require a payment system licence from FINMA. “Payment systems”, which are defined according to art.81 of the FMIA as entities that clear and settle payment obligations based on uniform rules and procedures, are considered as part of the financial market infrastructure according to art.2(a)(6) of the FMIA. The Swiss regulatory requirements for payment systems are based on international standards, particularly the Principles for Financial Market Infrastructure, issued by the Bank for International Settlement’s Committee on Payments and Market Infrastructure (CPMI) and the International Organization of Securities Commissions (IOSCO), which also apply to the management of cyber risks³⁷;

- *AML*: any Swiss payment system is subject to AMLA and the respective AML regulations. FINMA underlined that the highest international anti-money laundering standards would need to be ensured throughout the entire ecosystem of the project, which needs to be immune to elevated money laundering risks;
- “*same risks, same rules*”: based on the FMIA, any additional services which increase the risks of a payment system need to be subject to the respective requirements. Therefore, the potential risks of a Swiss payment system, e.g. bank-like risks, may be addressed by imposing further appropriate requirements based on FINMA’s technology-neutral principle of “same risks, same rules”, particularly since the issuance of Libra payment tokens would go beyond the typical aspect of a standard payment system. Additional requirements would refer to capital allocation (depending on the credit, market and operational risks), risk concentration, liquidity and the management of the Libra reserve; and
- *additional requirements*: additional requirements would refer to capital allocation (depending on the credit, market and operational risks), risk concentration, liquidity and the management of the Libra reserve. These requirements would be in line with similar activities in the financial markets and would also reflect the dimension of the Libra project, e.g. bank-like risks would be subject to bank-like regulatory requirements.

FINMA stressed that a necessary condition for this Libra project being granted a licence as a payment system would be that the returns and risks associated with the management of the reserve were entirely borne by the association itself and not by the stable coin holders, which would be the case for collective investment schemes.

³¹ Electronic excerpt from the Register of Commerce of the Canton of Geneva is available at: <https://ge.ch/hrcintapp/externalCompanyReport.action?companyOfrcId13=CH-660-2285019-7&ofrcLanguage=1>; more information on the project, including the respective *White Paper*, is available at: <https://libra.org/en-US/> [Both accessed 3 December 2019].

³² FINMA, “FINMA publishes ‘stable coin’ guidelines” (2019).

³³ FINMA, “FINMA publishes ‘stable coin’ guidelines” (2019).

³⁴ The French economy and finance minister consider Libra as a threat to national sovereignty, see “Facebook’s Libra is a threat to national sovereignty” (17 October 2019), *Financial Times* available at: <https://www.ft.com/content/bf2f588e-ef63-11e9-a55a-30afa498db1b> [Accessed 3 December 2019].

³⁵ Federal Council, “Federal Council informed of current status of stablecoin debate” (Press Release, 16 October 2019) available at: https://www.efj.admin.ch/efj/en/home/dokumentation/nsb-news_list.msg-id-76722.html [Accessed 3 December 2019].

³⁶ Detailed listing based on FINMA, “FINMA publishes ‘stable coin’ guidelines” (2019 available at: https://www.finma.ch/en/news/2019/09/20190911-mm-stable-coins/?pk_campaign=News-Service&pk_kwd=FINMA%20publishes%20%E2%80%98stable%20coin%E2%80%99%20guidelines [Accessed 3 December 2019].

³⁷ Bank for International Settlement, “Principles for Financial Market Infrastructures (PFMI)” available at: https://www.bis.org/cpmi/info_pfmi.htm [Accessed 3 December 2019].

Outlook: adaptation of federal laws to developments in distributed ledger technology

In March 2019 the Swiss Government initiated consultations on the adaptation of federal law to developments in DLT, aimed at increasing legal certainty, mostly due to regulatory mismatch between historically grown laws and new business models, removing hurdles for DLT-based applications and limiting risks of misuse.³⁸ A report from December 2018 explained that the Swiss legal framework is basically well suited to deal with new technologies in general but also pointed out the need for some selective actions.³⁹

The proposed amendment of federal law provides for a couple of adjustments⁴⁰:

- *Swiss Code of Obligations*: in order to increase legal certainty regarding the transfer of DLT-based assets, the possibility of an electronic registration of rights enabling the functions of negotiable securities shall be created;
- *FMIA*: the segregation of crypto-based assets in the event of bankruptcy shall be explicitly foreseen in the law;
- *Federal Law on Debt Enforcement and Bankruptcy*: a new authorisation category shall be created for “DLT trading facilities”. The intention is to allow regulated financial market players and private customers to offer trading, clearing, settlement and custody services with DLT-based assets;
- *Financial Institutions Act 2018*: it shall be possible for a securities firm to obtain a licence to operate an organised trading facility; and
- *AML*: DLT trading facilities shall be classified as financial intermediaries according to the AMLA and be obliged to comply with the respective due diligence obligations. Furthermore, DLT trading

facilities shall be subject to AML supervisions by FINMA. The AMLO–FINMA shall also be amended in order to consider payment tokens issued in an ICO and decentralised trading platforms, in case the underlying smart contract has power of disposal over third-party assets.⁴¹

The consultation ended in late June 2019 and the Swiss Parliament will have to adopt these legislative proposals. The parliamentary process may result in additional amendments or clarifications⁴² and the entry into force is not defined yet.⁴³

Summary and concluding observations

FINMA has been enhancing the regulatory framework for years in order to facilitate the technological progress for the financial sector as a whole, as has also the Swiss government. The two new guidelines provide for much-needed and even more welcomed clarifications. The Blockchain AML Guidance might be even more stringent than the relevant international standards but it could be seen as an opportunity and good argument against some critics of crypto currencies or even the blockchain technology as such. The Stable Coin Guidelines were published together with the public confirmation that the Libra Association had submitted a preliminary ruling request to FINMA. This in itself showed the relevance of these guidelines and the ambitions of FINMA regarding the Swiss financial centre.⁴⁴ However, the final fate of this project is yet to be defined, taking into account the rather guarded political comments at the international level. Finally, the suggested adaptation of federal law to developments in distributed ledger technology and many other projects at government or industry level, such as the updated guidelines of the Swiss Bankers Association on opening corporate accounts for blockchain companies, suggest that the transformation of the financial industry is still ongoing and that the laws and regulations will have to constantly reflect new realities.

³⁸ Federal Council, “Federal Council initiates consultation on improving framework conditions for blockchain/DLT” (Press Release, 22 March 2019) available at: <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-74420.html> [Accessed 3 December 2019].

³⁹ Federal Council, *Rechtliche Grundlagen für Distributed Ledger-Technologie und Blockchain in der Schweiz—Eine Auslegeordnung mit Fokus auf dem Finanzsektor* (14 December 2018) available at: <https://www.news.admin.ch/news/message/attachments/55150.pdf> [Accessed 3 December 2019].

⁴⁰ Detailed listing based on consultation proposal, Federal Council, “Bundesgesetz zur Anpassung des Bundesrechts und Entwicklungen der Technik verteilter elektronischer Register” (22 March 2019) available at: <https://www.news.admin.ch/news/message/attachments/56200.pdf> [Accessed 3 December 2019].

⁴¹ L. Bianchi and F. Andreotti, “Digital Assets—Proposed Amendments to the Legal and Regulatory Framework of Distributed Ledger Technology in Switzerland” (CapLaw 2/2019), p.25.

⁴² S. Kramer, D. Oser and U. Meier, “Tokenisierung von Finanzinstrumenten de lege ferenda”, *Jusletter* No.115, (2019).

⁴³ D. Haeberli, S. Oesterhelt and A. Wherlock, *Blockchain & Cryptocurrency Regulation 2020* (Switzerland, 2019), p.525.

⁴⁴ Neue Zürcher Zeitung, “Finma-Direktor Mark Branson: ‘Wenn ein Finanzplatz Ambitionen hat, muss er mit Aufmerksamkeit leben können’” (12 September 2019).